

## **The Dynamics of Customary Land Dispute Resolution: Between Customary Law and Positive Law**

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### **ABSTRACT**

*This research delves into the intricate interplay between traditional customary norms and formal statutory provisions in addressing indigenous land conflicts within Indonesia. Adopting a normative juridical framework, the study dissects the underlying legal doctrines, status, and operational realities of indigenous dispute resolution systems, while also scrutinising their interface with the formal mechanisms of state law. The analysis demonstrates that customary frameworks retain profound influence as mechanisms of land conflict resolution among native populations—an influence grounded in deep-rooted cultural authority, emphasis on communal restoration, and procedural informality. Nevertheless, the continued absence of consistent juridical acknowledgement and the lack of systemic integration within the national legal architecture have given rise to ambiguity and compromised the enforceability of traditional verdicts. Through an examination of statutory texts, judicial precedents, and scholarly discourse, the study exposes the pressing necessity for legal transformation—urging the institutionalisation of a more inclusive jurisprudential model that allows indigenous legal traditions to coexist and collaborate with state-driven legal protocols. It proposes the establishment of integrative frameworks, enhanced administrative mechanisms, and culturally responsive judicial interpretation as critical steps toward narrowing the legal divide and realising equitable access to justice in indigenous land affairs.*

**Keywords:** Indigenous legal traditions, statutory law, land conflict resolution, legal hybridity, pluralistic justice.

### **INTRODUCTION**

Customary land holds profound significance within the indigenous communities of Indonesia, far beyond its economic value or physical form. It embodies a spiritual, cultural, and collective essence, forming the backbone of communal identity and survival. Customary land is collectively managed, inherited through generations, and governed by deeply rooted local traditions that permeate daily life. In stark contrast to the ownership model of positive law, which is grounded in official documentation such as land certificates, customary land thrives on social recognition and community acknowledgment. This reliance on informal validation leaves customary land vulnerable, especially when confronted with the formalities and bureaucratic demands of the national legal system. According to AMAN (Indigenous Peoples Alliance of the Archipelago), over 20 million hectares of customary land in Indonesia remain unrecognized under national law as of 2023.

When disputes arise regarding customary land, the resolution process follows a distinct path defined by the principles of consensus and community harmony. Decisions are typically mediated by traditional leaders, elders, or customary institutions, with a focus on restorative justice—where the objective is not to assign guilt or fault but to



restore balance and unity within the community. Customary law takes into account sacred beliefs, historical continuity, and values that are often overlooked by formal legal systems. However, this approach encounters significant challenges when dealing with external entities like corporations or government bodies, which are bound by a formal legal framework that disregards these cultural values.

In contrast, the positive legal system, shaped by regulations such as the Basic Agrarian Law (UUPA) No. 5 of 1960 and Presidential Regulation No. 86 of 2018 on Agrarian Reform, operates on a foundation of legal procedures and written evidence. State institutions like the National Land Agency (BPN) and the judiciary play central roles in resolving land conflicts. In this framework, formal documentation is a prerequisite for ownership or control, posing a major barrier for indigenous communities who, despite having long-held stewardship of their ancestral lands, lack official certificates. The Agrarian Reform Consortium (KPA) reported in 2023 that over 600 agrarian conflicts were documented, with 59% involving customary lands that overlap with state concessions or corporate claims.

The friction between customary law and positive law underscores the dualistic nature of Indonesia's legal framework. While Article 18B (2) of the 1945 Constitution recognizes the existence and rights of indigenous peoples, practical implementation is laden with obstacles. National laws fail to fully embrace the concept of legal pluralism, often sidelining indigenous communities in critical decision-making processes. In the realm of conflict resolution, positive law tends to assert dominance, relegating customary methods to a position of weakness due to their lack of formal legal standing. To bridge this gap, a hybrid or integrative approach is crucial. For example, granting legal recognition to customary territories through local regulations or participatory processes like community mapping, led by the Network for Participatory Mapping (JKPP), can create a middle ground between these legal systems.

Real-world cases underscore the pressing need for such an integrative approach. In East Kalimantan, the Dayak Kenyah community clashed with a palm oil company over land cleared without prior consultation or consent. Similarly, in Papua, a land dispute between the Kamoro people and a mining company highlighted the lack of communication between customary and state legal frameworks. Even in South Sulawesi, the Ammatoa Kajang community's conflict with formal legal processes triggered deep-rooted cultural resistance. These disputes not only lead to the loss of land but also disrupt social structures, cultural practices, and community identities.

A systematic solution is needed to reconcile customary law and positive law in a more equitable and sustainable framework for conflict resolution. One potential method is community-based mediation, where government bodies like the BPN or the judiciary collaborate with customary leaders to mediate disputes. Additionally, the government must prioritize the swift ratification of the Indigenous Peoples Bill and foster agrarian reform programs that not only aim to redistribute land but also recognize indigenous territorial rights. According to the Food and Agriculture Organization (FAO), the legal acknowledgment of indigenous land rights could reduce agrarian conflicts by up to 40% and bolster regional socio-ecological resilience.

Thus, the resolution of customary land disputes is not merely a struggle between tradition and modernity, but a negotiation between two legitimate legal systems. Strengthening customary law does not entail rejecting positive law, and vice versa. What is needed is political will, institutional resolve, and public dedication to forging a link between indigenous wisdom and formal legal certainty in the pursuit of true agrarian justice.

## **METHODS**

This research adopts a doctrinal legal research design, which treats law as a system of rules articulated through legislation and scholarly interpretation. The investigation explores how Indonesia's legal framework negotiates the tension between formal statutory land regulations and deeply rooted customary land practices, particularly in the context of dispute resolution.

Two analytical lenses guide this study: the legislative (normative) lens and the conceptual (theoretical) lens. Through the legislative lens, the research examines key legal instruments—such as the 1945 Constitution, Law No. 5 of 1960 on Agrarian Principles (UUPA), and ministerial regulations on indigenous land rights—to assess how state law codifies or interacts with customary land claims. The conceptual lens enables the deconstruction and critical examination of fundamental ideas, including *hak ulayat* (customary communal rights), legal pluralism, and the contested space between indigenous jurisprudence and state-imposed legal norms.

Legal materials were acquired through an extensive doctrinal review of literature, divided into three tiers. Primary legal sources consist of constitutional provisions (e.g., Article 18B(2) of the 1945 Constitution), statutory enactments (e.g., UUPA), implementing regulations (e.g., Ministerial Regulation No. 18/2019 on Customary Land Administration), and landmark judicial decisions such as the Constitutional Court's Ruling No. 35/PUU-X/2012 affirming the legal recognition of customary forests. Secondary sources include academic books, peer-reviewed journal articles, and interpretative commentaries from legal scholars addressing the intersection of customary and national land governance. Tertiary sources, such as legal dictionaries and encyclopedic references, provide additional support in clarifying legal terminology and tracing the evolution of key doctrines. All materials were subjected to qualitative and interpretative analysis, aimed at revealing the normative tensions, alignments, and possible pathways for reconciliation between customary systems and state law in the governance of land disputes.

## **RESULTS AND DISCUSSION**

### **1. The Nature of Customary Land Conflicts**

Conflicts concerning indigenous land tenure in Indonesia predominantly arise from foundational disparities between the communal understanding of land possession and the codified legal doctrine enforced by the state. Within customary contexts, land is often held collectively by the community rather than through individual entitlement, a notion that clashes with statutory requirements for formal documentation such as land certificates. As state-driven development and commercial expansion continue to escalate, the marginalisation of traditional land claims becomes increasingly apparent. Such disputes typically involve a constellation of actors, including indigenous representatives, state authorities, and private enterprises, each asserting divergent legal paradigms. What characterises these tensions is not merely a disagreement over ownership, but a deeper confrontation between a system that upholds communitarian stewardship and long-term ecological balance, and another that prioritises administrative formalities and legal clarity above all.

### **2. Customary Law's Processes in Resolving Land-Based Conflicts**

Indigenous communities traditionally resort to internal, consensus-oriented methods for resolving land disputes, favouring conciliatory dialogue over adversarial litigation. These mechanisms are presided over by community figures such as tribal elders or customary councils, who are entrusted with upholding ancestral wisdom and communal harmony. The customary resolution process is inherently restorative, aiming not just at conflict settlement but also at preserving inter-personal and environmental equilibrium. Judgements rendered by these traditional authorities command widespread acceptance due to their alignment with indigenous ethical frameworks. However, when such outcomes enter the purview of the state judiciary, their legitimacy is often dismissed for lack of formal legal standing. This disjunction underscores a persistent problem: the informal but deeply respected authority of customary law remains legally invisible within the positivist structure of the national legal system.

### **3. Recognition of Customary Law within National Jurisprudence**

Customary law holds nominal legitimacy under Indonesia's legal framework, notably within the 1945 Constitution and the Basic Agrarian Law. Yet in practical terms, this recognition is riddled with regulatory ambiguity and institutional inertia. Landmark decisions, such as the Constitutional Court's ruling No. 35/PUU-X/2012, theoretically bolster indigenous land rights, but bureaucratic reluctance and inadequate legal literacy among state actors hinder their implementation. Moreover, official land administration continues to rely on documentary evidence, sidelining oral histories and community consensus that form the backbone of customary legal practice. This has left many indigenous populations in a legal vacuum—acknowledged in theory, yet denied in fact—perpetuating structural exclusion within Indonesia's land governance regime.

### **4. Conflicting Authority between Customary and Statutory Law**

One of the most intractable issues in indigenous land disputes is the jurisdictional tension between informal customary bodies and formal state institutions. Customary councils may adjudicate land conflicts in accordance with communal norms, yet their resolutions frequently lack enforceability in statutory courts. This dualism generates a crisis of legal legitimacy, where outcomes deemed just by local communities are dismissed by the state as legally non-binding. In effect, such parallel systems foster ambiguity and erode the rule of law, especially when indigenous communities confront powerful commercial interests backed by state-granted land concessions. The absence of integrated legal recognition for customary decisions reinforces the systemic subordination of indigenous voices within the national legal hierarchy.

### **5. Evaluating the Integration of Legal Traditions**

Attempts to reconcile customary and statutory law have so far focused on superficial formalities rather than substantive legal pluralism. While some legislation acknowledges indigenous tenure, it rarely addresses the philosophical divergence between tradition-bound norms and codified law. Customary systems tend to be adaptable, orally transmitted, and embedded in cultural context, whereas state law demands precision, documentation, and procedural regularity. The result is a legal architecture that accommodates diversity rhetorically but enforces uniformity in practice. A meaningful harmonisation effort must transcend bureaucratic formalities and embrace legal pluralism as a principle, not merely a concession. This requires reimagining the structure of agrarian law to genuinely reflect Indonesia's socio-cultural heterogeneity.

## 6. Strategic Proposals for Future Policy and Practice

To create a more equitable framework for resolving land disputes, future policy must adopt a genuinely inclusive orientation that legitimises the plurality of legal systems operating across the archipelago. At the conceptual level, this entails designing legislation that formally incorporates and respects customary authority structures as parallel—rather than subordinate—to state mechanisms. Practically, empowering indigenous adjudicative bodies through institutional support and legal training is essential to ensure procedural fairness and substantive justice. Bridging the epistemological divide between local and formal legal reasoning will require systemic legal education reforms involving both government officers and community leaders. Furthermore, the state must provide channels through which customary verdicts can be integrated into national legal procedures without compromising their cultural essence. Only through such pluralistic, intercultural legal design can Indonesia uphold its constitutional promise of protecting indigenous peoples.

A parallel can be observed between the present findings and the conclusions drawn by Adila and Alexandra (2024), who documented a significantly higher resolution rate of indigenous land disputes managed under traditional legal systems—approximately 75% of the 100 cases examined—compared to a mere 30% success rate achieved through formal litigation pathways. This disparity is largely attributed to the community-centric nature of customary practices, which emphasise reconciliation and collective well-being over adversarial confrontation. Such mechanisms gain traction not through statutory enforcement but through their cultural legitimacy and moral resonance. However, these grassroots processes face considerable limitations when interacting with institutional legal structures, particularly owing to the absence of regulatory frameworks that validate their outcomes within the statutory domain.

Complementing these insights, Wutwensa et al. (2025) advocate for an integrative adjudication model in the Papuan context, wherein traditional methods of dispute resolution are institutionalised through the formation of bespoke customary courts and mandatory participatory deliberations. Their proposed model aims not merely to recognise indigenous customs but to embed them within the state's legal infrastructure as coequal. The hybrid approach is underpinned by the belief that authentic dispute settlement requires mutual recognition between the epistemological frameworks of the state and that of local communities, particularly in cases where land is intertwined with collective identity, ancestral ties, and cultural continuity.

In another study, Lestaluhu et al. (2024) examine the precarious legal standing of customary land verdicts among the Malamoi people in Sorong. Despite the social legitimacy and communal endorsement of traditional rulings, their formal enforceability remains obstructed by legal inertia and the absence of procedural accommodation in national jurisprudence. This disconnect has perpetuated a dual system in which indigenous justice is acknowledged informally yet dismissed by courts of law. The researchers call for the judicial system to create formal pathways for recognising community-based rulings, particularly in land-related conflicts where stakes are existential rather than merely economic. Without such legal inclusion, indigenous populations remain effectively disenfranchised within their own territories.

Taken together, these comparative findings reaffirm the necessity of moving beyond tokenistic recognition of customary law toward a structural realignment of Indonesia's

legal architecture. This requires not only normative adjustments but also administrative and judicial reforms that enable a genuine pluralist legal order—one that honours local wisdom without subordinating it to the rigidity of codified law. Incorporating indigenous dispute resolution as a legitimate and co-functioning part of the national system is not merely a matter of legal innovation, but a prerequisite for social justice, legal accessibility, and the equitable treatment of all citizens.

## CONCLUSIONS

This research has uncovered the intricate and often fraught relationship between indigenous customary dispute practices and the prevailing architecture of statutory law in Indonesia, particularly in the realm of land conflicts involving traditional communities. Through a normative juridical lens, the study affirms that customary law remains an indispensable framework for resolving grassroots disputes—especially in regions where the formal legal apparatus is either absent or perceived as culturally irrelevant. These indigenous mechanisms are deeply rooted in restorative traditions, valuing communal harmony, interrelational bonds, and collective consensus—elements frequently sidelined within the rigid proceduralism of state courts. Yet, the coexistence of dual legal orders continues to obstruct meaningful integration, as customary rulings remain largely unrecognised and unsupported within the dominant legal paradigm. The absence of institutional scaffolding to validate and uphold these decisions diminishes their legal authority and erodes the juridical agency of indigenous peoples. Although positive law brings procedural clarity and codified norms, it often overlooks the rich socio-cultural complexities that define traditional land ownership and conflict. Hence, there is an urgent call for a transformative reconfiguration of Indonesia's legal system—one that transcends monocultural legal formalism and embraces genuine legal pluralism. This would involve the institutional embedding of hybrid dispute resolution frameworks, the codification of legal protections for indigenous adjudicatory processes, and a judiciary that is attuned to the cultural dimensions of local justice. Such recalibration is not merely a statutory innovation but a moral imperative to uphold justice, protect indigenous identity, and restore balance within a fractured legal landscape.

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